

HOUSE BILL REPORT

E2SHB 1035

As Passed House:

March 10, 2007

Title: An act relating to anaerobic digestion power.

Brief Description: Addressing the purchase of anaerobic digestion power.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Morris, Hudgins, Eickmeyer, Linville and B. Sullivan).

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/17/07, 2/20/07 [DPS];

Appropriations: 3/1/07, 3/3/07 [DP2S(w/o sub TEC)].

Floor Activity:

Passed House: 3/10/07, 94-3.

Brief Summary of Engrossed Second Substitute Bill

- Establishes a Clean Streams Grant Program within the Department of Community, Trade and Economic Development (DCTED).
- Authorizes the DCTED to award grants to anaerobic digester power producers.
- Establishes the Clean Streams and Clear Sky Subaccount in the Energy Freedom Account.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; McCoy, Vice Chair; Crouse, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Eddy, Ericksen, Hankins, Hudgins, Hurst, Takko and VanDeWege.

Staff: Kara Durbin (786-7133).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology, Energy & Communications. Signed by 33 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Buri, Chandler, Cody, Conway, Darneille, Dunn, Ericks, Fromhold, Grant, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Kretz, Linville, McDermott, McDonald, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist, P. Sullivan and Walsh.

Minority Report: Without recommendation. Signed by 1 member: Representative Anderson.

Staff: Owen Rowe (786-7391).

Background:

Anaerobic Digestion

Anaerobic digestion is the bacterial breakdown of organic materials in the absence of oxygen. This biological process produces biogas, which is principally composed of methane and carbon dioxide. Biogas is typically produced from feedstocks such as sewage sludge, livestock manure, and wet organic materials. Anaerobic digesters are devices that use the natural process of anaerobic digestion to treat waste, produce energy, or both.

Energy Freedom Program

In 2006, the Legislature created the \$17 million Energy Freedom Program within the Department of Agriculture. The purpose of the Energy Freedom Program is to support projects that convert agricultural waste into energy. Five alternative energy projects (totaling \$10.25 million) were earmarked by the Legislature as part of the 2006 Supplemental Capital Budget. The remaining funds (\$6.75 million) were allocated according to a competitive loan process. Six projects were selected. Four loans were awarded to support oilseed processing for biodiesel, and the remaining two loans were awarded to support anaerobic digestion.

Master Contracts

A Master Contract is an optional-use contract, established and administered by the Department of Information Services (DIS) and used by state and local government entities and qualifying non-profit organizations to purchase products and services directly from contracts. Master Contracts result from a competitive bidding process run by the DIS or by the Western State Contracting Alliance.

Power Management Software Master Contract

In July of 2006, the DIS entered into a three-year Master Contract (T06-MST-002) with the Verdiem Corporation for power management software, services, maintenance, and support. The Master Contract is an optional use contract, which means state and local government entities have the option to purchase the power management software under the contract, but are not required to do so.

Summary of Engrossed Second Substitute Bill:

Clean Streams Program

A Clean Streams Grant Program (Program) is established within the Department of Community, Trade and Economic Development (DCTED). The purpose of the Program is to award grants to anaerobic digester power producers that seek assistance to pay for the capital costs associated with the project.

Eligibility Process

In order to be eligible for a grant award under the Program, a person or entity in the process of developing an anaerobic digester project in the state must, prior to completion of the project, submit a call for subscriptions seeking a power purchase agreement offer from another electric utility to purchase power from the anaerobic digester project.

Once a power purchase agreement offer has been made by a potential purchaser, the power producer must ask their local electric utility for transmission access to wheel the power from the generation site to the potential purchaser that submitted the highest bid, if the highest bid was not made by the local electric utility. If an agreement regarding transmission access cannot be reached, the power producer may send a written purchase request to the local electric utility, requesting that the utility purchase the output of the anaerobic digester project at the utility's avoided cost as required under federal law that obligates the utility to purchase power from a qualifying facility at the utility's avoided cost rate.

After a power producer has secured a power purchase agreement offer from a potential purchaser and has secured transmission access for the power, the power producer may apply for a Clean Streams Grant. To apply, the power producer must submit: (1) the power purchase agreement offer between the power producer and the purchaser, including the estimated revenue over the life of the contract; and (2) a detailed analysis of the initial capital investment cost of the anaerobic digester project.

Criteria for Awarding Grants

A power producer must meet the following criteria, at a minimum, in order to participate in the grant program:

- the power producer is carrying original debt on the initial capital investment in the anaerobic digester project that has not been satisfied by other federal, state, or private funding sources;
- the power producer has secured a power purchase agreement offer from a potential purchaser of the electricity; and
- the power producer was unable to secure sufficient revenue from a potential purchaser to recover the initial capital investment over the length of the power purchase agreement offer.

Any grant award determined by the DCTED must supply the power producer with no more than the power producer's cost to finance the initial capital investment during the period of the power purchase agreement, minus the revenue to be generated by the power purchase

agreement offer between the power producer and the potential purchaser, and minus any federal, state, or private funding received for the anaerobic digester project.

Grant awards must be based upon the annual electricity output of the anaerobic digester project. The grant award must be reviewed annually. Upon review, the grant award may be adjusted to reflect actual power produced for the previous year as compared to the projected amount of power used to calculate the amount of the original grant award.

The DCTED is authorized to adopt rules as necessary to implement the grant program. If appropriations made to the DCTED are insufficient to cover all anaerobic digestion projects applying for a grant, the DCTED may prioritize and prorate grant awards as necessary.

Purchase and Installation of Power Management Software

By September 1, 2007, the Department of Information Services (DIS) must survey all desktop computers owned by the state and identify which desktop computers are suitable for using power management software. After conducting this review, the DIS must purchase power management software for all desktop computers owned by the state that have been identified by the DIS as suitable for using the power management software.

The power management software must be purchased according to the terms of the state's existing master contract number (T06-MST-002) effective July 7, 2006, or according to a subsequent contract entered into by the state for power management software that offers comparable or better energy efficiency savings.

When acquiring new desktop computers, the DIS must purchase and install power management software at the time of acquisition, unless the software is not suitable for a particular desktop computer's intended use.

The DIS is authorized to retain any rebate moneys the state receives for energy conservation that results from utilization of power management software.

The DIS must report annually to the Legislature on the number of licenses installed, the estimated energy saved per year, as well as the amount and number of rebates received.

Clean Streams and Clear Sky Subaccount

The Clean Streams and Clear Sky Subaccount is created as a subaccount of the Energy Freedom Account. Revenues to the subaccount shall consist of appropriations made to the subaccount that represent energy savings generated from using power management software on state computers. Expenditures from the subaccount may only be used for projects and activities authorized by the Clear Sky program and the Clean Streams program.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on substitute bill on February 20, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void if not funded in the budget.

Staff Summary of Public Testimony: (Technology, Energy & Communications)

(In support) These are the types of resources we want to encourage in our state. Often the local utility isn't willing to pay the true market rate for this type of power and thus the power is left stranded. Requiring a state agency to pay the green tag rate might be a way to make sure these types of resources get utilized.

This type of program is essential for investment by the farm community. These types of projects help stabilize the income of farmers, reduce air pollution, and reduce odors and methane. They help keep our communities clean. This bill helps reduce global warming by utilizing renewable energy and it also reduces methane.

The high investment cost of anaerobic digester projects make the viability of such projects very challenging. This is a sound technology that we should encourage in our state. These projects are very important to farmers. This provides a stable market for farmers to operate a digester. They help sustain the agricultural economy of our state. No dairy farm can survive with one of these projects without receiving assistance for the high capital costs.

(With concerns) Demand for these projects will grow in the future regardless. The retail rate would vary utility by utility. We are concerned about whether the utility can recover its administrative costs under this bill, including interconnection costs. We suggest the reference to service territories be deleted since our state does not have service territories.

(Opposed) We recently hooked up a large anaerobic digester project in the Yakima Valley area. These types of projects can be implemented without this bill. We support the objective of this bill – to encourage development of these types of projects. If the transaction is between the state and the producer, then we don't have as many concerns.

Projects of this size fall under the Public Utility Regulatory Policy Act (PURPA). Under the PURPA, utilities are obligated to buy at a state-set avoided cost, not the retail rate. We see this as a conflict with federal law. We think we would have to submit a tariff for the wheeling charges. This may cause us operational difficulties in terms of scheduling of power. If we need to wheel across our system under this bill, the state cannot compel us to do this because wheeling is under the Federal Energy Regulatory Commission jurisdiction. Property tax exemptions or carbon credits for these projects might be a better option.

Staff Summary of Public Testimony: (Appropriations)

(In support) None.

(Opposed) None.

Persons Testifying: (Technology, Energy & Communications) (In support) Representative Morris, prime sponsor; Dave Reiner, Qualco Energy; Carolyn Henri, Stanwood Bioenergy Producers; Joe Harrison, Washington State University; Andy Werkhoven, Werkhoven Dairy, Inc.; Jack Field, Washington Cattleman's Association; and John Roney, Snohomish County Executive's Office.

(With concerns) Ken Johnson, Puget Sound Energy; Dave Warren, Washington Public Utility Districts; Dave Arbaugh, Snohomish Public Utility District; and Miguel Perez-Gibson, Northwest Energy Coalition.

(Opposed) Kathleen Collins, PacifiCorp; and Collins Sprague, Avista Corp.

Persons Testifying: (Appropriations) None.

Persons Signed In To Testify But Not Testifying: (Technology, Energy & Communications) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.